

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PER ISBERG, D.D.S., and MARIE ISBERG;  
and COLONY INSURANCE COMPANY,

Plaintiffs,

V.

## BRITAMCO UNDERWRITERS, INC.,

Defendant.

No. C04-2140Z

## MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The Court DENIES the Defendant's motion to exclude evidence from designated witnesses, docket no. 45. Under Washington law, late notice or other noncompliance with an insurance policy does not deprive the insured of the benefits of the policy unless the insurer demonstrates actual prejudice resulting from the insured's noncompliance. Northwest Prosthetic & Orthotic Clinic, Inc. v. Centennial Insurance Co., 100 Wash. App. 546, 550 (2000) (citing Oregon Auto. Ins. Co. v. Salzberg, 85 Wash. 2d 372, 377 (1975)). Whether delayed notice of a claim has caused actual prejudice is ordinarily an issue of fact. See Tran v. State Farm Fire & Cas. Co., 136 Wash. 2d 214, 228 (1998). The Court finds that there are disputed issues of fact as to whether Defendant suffered actual prejudice as a result of any alleged delay in notice. Therefore, Defendant's argument that Plaintiffs' potential witnesses must be excluded as irrelevant because the only relevant issue is the Plaintiffs' delay in providing notice fails.

(2) The Clerk is directed to send a copy of this Minute Order to all counsel of record.

Filed and entered this 17th day of May, 2005.

BRUCE RIFKIN, Clerk

s/ Gail Glass

By \_\_\_\_\_  
Gail Glass  
Deputy Clerk